

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10659 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 TO 5 NO

BANSILAL BHAKTIRAM KHATRI

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
RULE SERVED for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2
MR BHARAT T RAO for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/05/99

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner before this court is detained by way of preventive measure by the District Magistrate,

Valsad, under his order dated 12th September, 1998, made under the powers conferred upon him under sub-section (2) of section-3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Along with the order of detention, the petitioner has also been supplied with the copy of the grounds of detention. Though the order was made on 12th September, 1998, it was not executed till 10th November, 1998.

The challenge to the impugned order of detention requires to be accepted on the ground of unexplained period consumed in considering the representation made on behalf of the petitioner. It appears that on 30th November, 1998, one Mohanlal Khatri, the brother-in-law of the petitioner, made a representation to the District Magistrate, the Detaining Authority, as well as the Central Government. The representation was received by the Central Government on 2nd December, 1998, and the relevant information was received by it from the State Government on 16th December, 1998. Having received the relevant information on 16th December, 1998, the order of rejecting the representation was made on 21st December, 1998. In the counter-affidavit made by the Under Secretary to the Government of India, Ministry of Food & Consumer Affairs, it is not explained how the representation was dealt with during the period from 16th December, 1998, to 21st December, 1998. In view of the judgment of the Supreme Court in the matter of RAJAMMAL VS STATE OF TAMIL NADU (AIR 1999, SC, 684) , the authority concerned is duty bound to explain everyday of pendency of the representation before it, failing which the Hon'ble Supreme Court has held, " further detention must necessarily be disallowed ". In the present case, the concerned authority has not explained how the representation was dealt with during the period from 16th December, 1998, to 21st December, 1998. On account of the above referred unexplained period, in view of the above referred decision of the Hon'ble Supreme Court, the continued detention of the petitioner can not be allowed.

The petition is, therefore, allowed. The impugned order of detention is quashed and set aside. The petitioner, unless required in some other matter, be set free. Rule is made absolute.

JOSHI